

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 IMPERIAL IRRIGATION DISTRICT,
12 Plaintiff,
13 v.
14 CALIFORNIA INDEPENDENT
15 SYSTEM OPERATOR CORPORATION,
16 Defendant.
17
18
19

Case No.: 15-CV-1576-AJB-RBB

ORDER:

**(1) DENYING DEFENDANT’S
MOTION FOR JUDGMENT ON THE
PLEADINGS, (Doc. No. 77); AND**

**(2) GRANTING PLAINTIFF’S
MOTION FOR LEAVE TO AMEND,
(Doc. No. 84)**

20 Presently before the Court are Defendant California Independent System Operator
21 Corporation’s (“CAISO”) motion for judgment on the pleadings pursuant to Federal Rule
22 of Civil Procedure 12(c),¹ (Doc. No. 77), and Plaintiff Imperial Irrigation District’s (“IID”) motion for leave to amend pursuant to Rule 15, (Doc. No. 84). Both motions are fully
23 briefed. Having reviewed the parties’ arguments in light of controlling authority, and
24 pursuant to Local Civil Rule 7.1.d.1, the Court finds the matters suitable for decision
25 without oral argument. For the reasons set forth below, the Court **DENIES** CAISO’s
26
27

28 ¹ All references to “Rules” in this order are to the Federal Rules of Civil Procedure.

1 motion and **GRANTS** IID's motion. IID is **ORDERED** to file its second amended
2 complaint on the docket no later than *seven days following this order's issuance*.

3 **BACKGROUND**

4 This dispute centers on nondiscriminatory access to California's electric
5 transmission grid.² The parties in this litigation are two of the eight entities that provide
6 electric transmission service and transmission operations services within the State of
7 California. (Doc. No. 26 ¶¶ 2, 23.) CAISO controls the vast majority of California's electric
8 transmission grid and thus controls entities' access to the customers located within
9 CAISO's grid. (*Id.* ¶¶ 24, 85, 89, 91–92.)

10 In short, IID alleges that CAISO duped it into expending over \$30 million in
11 upgrades to Path 42, one of the two transmission lines that connect IID's BAA to CAISO's,
12 by promising greater access to CAISO's grid. (*See id.* ¶¶ 39, 103, 107–15, 126–34, 141.)
13 The revocation of this promise has resulted in renewable energy developers located near
14 or within IID's BAA to bypass the IID system and connect directly with the CAISO system,
15 thus depriving IID of significant revenue from the provision of interconnection services,
16 transmission services, and transmission operations services. (*Id.* ¶¶ 9.A, 159, 173(a), 183.)
17 It has also left developers of renewable energy with little ability to plan, finance, and build
18 new renewable energy facilities that connect to IID's transmission system. (*Id.* ¶ 160.)

19 IID alleges that due to the developers connecting directly to CAISO's grid, there is
20 a spillover of energy—of which CAISO knew and planned—onto IID's transmission
21 system, which precludes IID from selling or otherwise using that capacity. (*Id.* ¶ 9.C.) IID
22 further alleges CAISO has extensively used IID's transmission lines and infrastructure to
23 import substantial out-of-state power without compensating IID for this use. (*Id.* ¶¶ 9.C,
24 173(g), 193.) IID alleges CAISO's actions were motivated by, *inter alia*, its intent to further
25

26 ² The Court has exhaustively summarized this case's factual background in its orders ruling
27 on CAISO's motions to dismiss. (Doc. Nos. 23, 51.) The Court assumes familiarity with
28 those orders and accordingly will recite here only those facts necessary to understand the
case's current posture with respect to the instant motions.

1 its monopolistic position in the relevant markets by forcing IID to join CAISO. (*Id.* ¶ 162.)

2 On July 16, 2015, IID filed the instant action, alleging claims for monopolization
3 and attempted monopolization in violation of § 2 of the Sherman Act, and state law claims
4 of breach of implied contract, conversion, quantum meruit, and restitution. (Doc. No. 1.)
5 IID’s amended complaint added a claim under California’s unfair competition law
6 (“UCL”). (Doc. No. 26 ¶¶ 222–25.) After two motions to dismiss and one motion for
7 reconsideration, the only claims to have survived are the conversion and unfair UCL causes
8 of action. (*See* Doc. No. 67.) CAISO now moves for judgment on the pleadings on these
9 remaining claims. (Doc. No. 77.) IID seeks leaves to amend its complaint to add a claim
10 for trespass. (Doc. No. 84.) Both matters are fully briefed. (Doc. Nos. 81, 83, 89, 90.)

11 DISCUSSION

12 *I. CAISO’s Motion for Judgment on the Pleadings*

13 CAISO asserts that it is entitled to judgment on the pleadings on IID’s two remaining
14 claims. CAISO argues that the conversion claim fails as a matter of law because the
15 property at issue—IID’s transmission lines and facilities—is real property, not personal
16 property. (Doc. No. 77-1 at 4–6.)³ CAISO further argues that IID’s unfair UCL claim fails
17 as a matter of law because there is no harm to competition based only on the increase in
18 prices to consumers. (*Id.* at 6–7.)

19 A. Legal Standard

20 Rule 12(c) provides that “[a]fter the pleadings are closed—but early enough not to
21 delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). A
22 motion for judgment on the pleadings must be evaluated under the same standard
23 applicable to motions to dismiss brought under Rule 12(b)(6). *See Enron Oil Trading &*
24 *Trans. Co. v. Walbrook Ins. Co.*, 132 F.3d 526, 529 (9th Cir. 1997). Thus, the standard
25 articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v. Twombly*, 550

26
27
28 ³ The Court cites to the blue CM/ECF-generated document and page numbers located at the top of each page.

U.S. 544 (2007), applies to a motion for judgment on the pleadings. *Lowden v. T-Mobile USA, Inc.*, 378 F. App'x 693, 694 (9th Cir. 2010) (“To survive a Federal Rule of Civil Procedure 12(c) motion, a plaintiff must allege ‘enough facts to state a claim to relief that is plausible on its face.’” (quoting *Twombly*, 550 U.S. at 544)). When deciding a motion for judgment on the pleadings, the Court assumes the allegations in the complaint are true and construes them in the light most favorable to the plaintiff. *Pillsbury, Madison & Sutro v. Lerner*, 31 F.3d 924, 928 (9th Cir. 1994). A judgment on the pleadings is appropriate when, even if all the allegations in the complaint are true, the moving party is entitled to judgment as a matter of law. *Milne ex rel. Coyne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1042 (9th Cir. 2005).

B. Conversion

CAISO first seeks judgment on the conversion claim. CAISO argues that because the tort of conversion applies only to personal property, and because transmission lines and facilities are real property, IID’s conversion claim fails as a matter of law. (Doc. No. 77-1 at 4–6.) IID responds that the law governing whether transmission facilities are real property is not as clear cut as CAISO would have the Court believe; as such, judgment on the pleadings is inappropriate. (Doc. No. 81 at 9–11.)⁴

Under California law, the elements of a conversion claim are (1) ownership or right to possession of the property; (2) wrongful disposition of the property right; and (3) damages. *G.S. Rasmussen & Assocs., Inc. v. Kalitta Flying Serv., Inc.*, 958 F.2d 896, 906 (9th Cir. 1992). The tort of conversion applies to personal property, not real property. *Salma v. Capon*, 161 Cal. App. 4th 1275, 1295 (2008). Stated another way, conversion of real property “is not a recognized tort.” *Id.* at 1282.

California defines “real property” as land; “[t]hat which is affixed to land”; “[t]hat which is incidental or appurtenant to land”; and “[t]hat which is immovable by law[.]” Cal.

⁴ IID also argues that the SAC sufficiently states a claim for trespass. (Doc. No. 81 at 7–9.) The Court will address this argument *infra*. See *infra* Discussion Section II.

1 Civ. Code § 658. “A thing is deemed to be affixed to land when it is . . . imbedded in it, as
2 in the case of walls; or permanently resting upon it, as in the case of buildings; or
3 permanently attached to what is thus permanent, as by means of cement, plaster, nails,
4 bolts, or screws[.]” *Id.* § 660. Personal property is defined as “[e]very kind of property that
5 is not real” property. *Id.* § 663.

6 CAISO relies on multiple California cases that state electrical transmission lines and
7 facilities are real property. In *A. S. Schulman Electric Co. v. State Board of Equalization*,
8 the Court of Appeal noted that “electrical transmission and distribution lines . . . because
9 of their relatively permanent nature and their either being bolted to concrete foundations
10 or imbedded in the land, seem to [] constitute realty rather than tangible personalty.” 49
11 Cal. App. 3d 180, 184 (1975).

12 IID responds that CAISO’s authorities are unhelpful because they are tax law cases.
13 (Doc. No. 81 at 10.) IID further asserts that because CAISO seeks to establish that the
14 transmission lines are real property by virtue of being fixtures, whether the transmission
15 lines are in fact real property turns on IID’s intent; as such, the inquiry is not appropriate
16 for adjudication on the instant motion. (*Id.* at 11.)

17 In its reply, CAISO does not dispute that its argument turns on whether the
18 transmission lines and facilities constitute fixtures. To make this assessment, “[i]t is settled
19 that three tests must be applied . . . : ‘(1) the manner of its annexation; (2) its adaptability
20 to the use and purpose for which the realty is used; and (3) the intention of the party making
21 the annexation.’” *Simms v. Los Angeles Cty.*, 35 Cal. 2d 303, 309 (1950) (quoting *San*
22 *Diego Trust & Sav. Bank v. San Diego Cty.*, 16 Cal. 2d 142, 149 (1940)).

23 Contrary to CAISO’s assertion, the Court cannot determine, on the record before it,
24 that IID’s transmission lines and facilities are real property given that IID’s intention, as
25 the party making the annexation, cannot be determined in the absence of discovery. This
26 is particularly so given that IID does not own all of the land on which its lines and facilities
27 run. (Doc. No. 81 at 11.) *See City of Vallejo v. Burrill*, 64 Cal. App. 399, 406–07 (1923)
28 (finding that pipeline remained the city’s personal property and was not a fixture of the

landowner's real property because it was incontrovertible that "it was the intention that the pipe-line should remain the property of the city, and that its uses were for the city alone").⁵

The Court acknowledges the existence of case law supporting CAISO's position, but agrees with IID that because these cases are all decided in the area of tax law, they are not dispositive at this juncture. First, the concepts employed by these cases are "relatively artificial" and "relatively self-contained" to the field of tax law:

If [the field of tax law] utilizes popular meaning or concepts from other fields of law, it does so only by force of its own objectives and definitions. It does not define real property or "improvements" to real property, if only because it makes little use of these terms. Its definition of tangible personal property deals with tangibility, not with distinctions between personalty and realty. To pursue the will-o'-the-wisp of definitions, concepts and distinctions from other areas of law—where they are shaped by purposes and by social and economic factors unrelated to sales taxation—leads to false goals. The coverage of the sales tax law is shaped by its own provisions and definitions and, where these are unclear, by applying its own perceived policies and concepts.

King v. State Bd. of Equalization, 22 Cal. App. 3d 1006, 1010–11 (1972) (footnotes omitted). Second, there is case law supporting IID's position that the transmission lines and facilities are personal property. *See, e.g., City of Vallejo*, 64 Cal. App. at 406–07. As such, the Court finds judgment on the pleadings as to IID's conversion claim is not appropriate.

C. Unfair UCL Claim

CAISO next seeks judgment on the pleadings on IID's unfair UCL claim, asserting that it is subject to dismissal because it is not based on any harm to competition. (Doc. No.

⁵ CAISO's citation to *Garden Water Corp. v. Fambrough* does not help CAISO on this point, given that it was "quite clear that the parties intended the pipelines and the easements for the pipelines to be treated as a unit." 245 Cal. App. 2d 324, 327 (1966). Another of CAISO's cases states similarly. *Chula Vista Elec. Co. v. State Bd. of Equalization*, 53 Cal. App. 3d 445, 450 (1975) ("Adaptation to use with the real property and the intention with which the property is installed must be considered as well as physical annexation." (citation omitted)).

77-1 at 6–7.) IID contends that CAISO improperly seeks reconsideration of the Court’s prior orders given that this particular claim has survived CAISO’s motions to dismiss and for reconsideration. (Doc. No. 81 at 6–7.) IID also argues that the unfair UCL claim is sufficiently stated because the SAC alleges injury to competition and, at any rate, injury to competition is not even necessary to state the claim. (*Id.* at 12–17.)⁶

The Court agrees that CAISO’s motion amounts to nothing more than a third bite at the apple. But even when considering the merits of CAISO’s position, the Court finds it is without merit. CAISO mounts a two-pronged attack against the unfair UCL claim, asserting (1) injury to a competitor is not injury to competition; and (2) an increase in consumer prices is insufficient to show harm to competition. (Doc. No. 77-1 at 6–7; Doc. No. 83 at 7.) This approach, however, ignores that when these two categories of allegations are coupled, they can sufficiently state an “antitrust injury of the type the antitrust laws were designed to prevent” and, thus, an unfair UCL claim. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1478 (9th Cir. 1997) (finding “an increase in consumer prices caused by the asserted conduct [of diverting indigent patients to other hospitals and threatening physicians who did not support hospital’s monopoly] would constitute antitrust injury of the type the antitrust laws were designed to prevent”), *overruled on other grounds by Lacey v. Maricopa Cty.*, 693 F.3d 896, 925 (9th Cir. 2012).⁷

Here, IID alleges that CAISO duped IID into incurring millions of dollars in expenses and then used IID’s facilities, without authorization, to import substantial out-of-state power. (Doc. No. 26 ¶¶ 186, 193.) IID alleges that this unauthorized use of its facilities renders such use unavailable to IID and the entities it serves. (*Id.* ¶¶ 9.D, 10, 193.) IID

⁶ Because the entire FAC is couched in terms of IID competing with CAISO, the Court will not entertain IID’s second argument, namely, that injury to competition is unnecessary to state an unfair UCL claim.

⁷ The Ninth Circuit in *Lacey* overruled its prior decision in *Forsyth* only as to the “*Forsyth* rule.” *Lacey*, 693 F.3d at 925–28 (stating the Ninth Circuit’s now-defunct *Forsyth* rule as “a plaintiff waiv[ing] all claims alleged in a dismissed complaint which are not realleged in an amended complaint” (quoting *Forsyth*, 114 F.3d at 1474)).

1 asserts these additional burdens ultimately affect the rates passed onto the public. (*Id.* ¶¶
2 186, 200–01.) CAISO cannot seriously assert that if the Court accepts these allegations as
3 true, the increase in rates is the result of “pro-competitive conduct.” (Doc. No. 83 at 7.)

4 The Court meant what it said in its last order: The unfair UCL claim is sufficiently
5 stated to survive the pleadings stage. *See Forsyth*, 114 F.3d at 1478 (finding plaintiffs were
6 entitled to survive summary judgment on Sherman Act monopolization and attempted
7 monopolization claims, finding allegations of increased consumer prices due to conduct
8 that “increased the operating cost of [] competitors” sufficient to create a genuine issue of
9 material fact on the issue of antitrust injury); *see also Multistate Legal Studies, Inc. v.*
10 *Harcourt Brace Jovanovich Legal & Prof’l Publ’ns, Inc.*, 63 F.3d 1540, 1553 n.12 (10th
11 Cir. 1995) (stating that monopolist’s practice of scheduling courses to conflict with
12 competitor’s courses could raise competitor’s costs and therefore “would qualify as
13 anticompetitive conduct”); *Premier Elec. Constr. Co. v. Nat’l Elec. Contractors Ass’n*, 814
14 F.2d 358, 368 (7th Cir. 1987) (noting that when defendant “raised its rivals’ costs,” it
15 “raised the market price to its own advantage,” and that “[t]he principal purpose of the
16 antitrust laws is to prevent overcharges to consumers”). As such, the Court **DENIES**
17 CAISO’s motion for judgment on the pleadings.

18 ***II. IID’s Motion for Leave to Amend the Complaint***

19 IID seeks leave to file a second amended complaint (“SAC”) to add the word
20 “trespass” after the word “conversion” to make clear that IID also brings a claim for
21 trespass. (Doc. No. 84.) CAISO opposes the motion, arguing amendment is futile, IID has
22 already been afforded multiple opportunities to properly plead its claims, and CAISO
23 would be prejudiced. (Doc. No. 89.)

24 **A. Legal Standard**

25 Rule 15(a) governs leave to amend prior to trial. A party may amend its pleading
26 once as a matter of course within 21 days after serving it; or, if the pleading is one requiring
27 a response, within 21 days after service of the responsive pleading or motion. Fed. R. Civ.
28 P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing

1 party's written consent or the court's leave. The court should freely give leave when justice
2 so requires." Fed. R. Civ. P. 15(a)(2). "Five factors are taken into account to assess the
3 propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing
4 party, futility of the amendment, and whether the plaintiff has previously amended the
5 complaint." *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014)
6 (quoting *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)). These factors do not
7 "merit equal weight," and "it is the consideration of prejudice to the opposing party that
8 carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052
9 (9th Cir. 2003) (per curiam). "Absent prejudice, or a strong showing of any of the
10 remaining [] factors, there exists a *presumption* under Rule 15(a) in favor of granting leave
11 to amend." *Id.* (emphasis in original).

12 A. Analysis

13 The Court finds granting IID leave to amend its complaint is appropriate.
14 Notwithstanding CAISO's arguments to the contrary, the Court finds amendment is not
15 futile. The elements of trespass to property are (1) plaintiff owed the property; (2)
16 defendant intentionally, recklessly, or negligently entered plaintiff's property; (3) plaintiff
17 did not give permission for the entry; (4) plaintiff was actually harmed; and (5) defendant's
18 entry was a substantial factor in causing plaintiff's harm. *Vega v. JPMorgan Chase Bank,*
19 *N.A.*, 654 F. Supp. 2d 1104, 1119 (E.D. Cal. 2009). CAISO challenges IID's allegations
20 on the third through fifth elements. (Doc. No. 83 at 5.) However, IID alleges that CAISO
21 has used IID's transmission facilities without authorization. (Doc. No. 84-3 ¶ 193.) IID
22 also alleges that it has been directly injured by CAISO's unauthorized use. (*Id.*) IID alleges
23 the damage it has sustained is a "direct and foreseeable" consequence of CAISO's
24 unauthorized use. (*Id.* ¶ 234.) As such, the Court does not find this to be the case where
25 "no set of facts can be proved under the amendment to the pleadings that would constitute
26 a valid and sufficient claim" *Koistra v. Cty. of San Diego*, No. 16CV2539-GPC(AGS),
27 2017 WL 2578936, at *4 (S.D. Cal. June 14, 2017) (quoting *Miller v. Rykoff-Sexton, Inc.*,
28 845 F.2d 209, 214 (9th Cir. 1988)).


1 Nor is the Court persuaded by CAISO's alternative arguments. IID has only
2 amended its complaint once in this case; as such, the Court will not deny IID's request on
3 that basis. Furthermore, while this case is two years old, it is still in the early stages of
4 discovery, and IID filed its motion by the deadline set for such motions. (Doc. No. 80 at 1
5 ¶ 1.) As such, the Court does not find IID has unduly delayed in bringing its motion to
6 amend. Finally, any prejudice CAISO suffers through the expenditure of its time and
7 resources is CAISO's own doing. CAISO's arguments relating to the conversion claim
8 could have been asserted in one of its two prior motions to dismiss or its motion for
9 reconsideration. That CAISO is now embroiled in another round of motion practice is the
10 result of its own tactical decisions. Accordingly, any prejudice to CAISO is insufficient to
11 deny IID's request for leave to amend.

12 CONCLUSION

13 Based on the foregoing, the Court **DENIES** CAISO's motion for judgment on the
14 pleadings, (Doc. No. 77), and **GRANTS** IID's motion for leave to amend the complaint,
15 (Doc. No. 84). The Court **ORDERS** IID to file its second amended complaint on the docket
16 no later than seven days following this order's issuance.

17
18 **IT IS SO ORDERED.**

19 Dated: September 22, 2017

20 
21 Hon. Anthony J. Battaglia
22 United States District Judge
23
24
25
26
27
28